

**Before the
Federal Communications Commission
Washington, D. C.**

In the Matter:

MM-Docket No. 99-25

Creation of a Low
Power radio Service

Comments of Eastern Sierra Broadcasting

Eastern Sierra Broadcasting is a permittee of FM translators and an applicant of approximately 30 remaining FM translator applications from the March 2003 filing window. Therefore Eastern Sierra is a direct party of interest on the outcome of this proceeding. We also have pending applications from the January 2004 AM filing window.

In order for our responses to be best understood we will refer to each number paragraph from the Commission's further notice of proposed rulemaking ahead of each of our relevant comments.

Paragraph 26 and 27.

The equipment utilized for LPFM is distinctly different from that used for FM translators. The antennas utilized are not broadcast antennas and in many cases are from manufactures unknown to broadcasters. Theses are lighter weight antennas and can be delivered much faster than a broadcast type antenna.

FM translator applicants and permittees have mostly specified an antenna that is at a minimum an educational type circular polarized antenna. However in some cases of winter icings conditions that is not enough. In this instance a more expensive broadband antenna is needed to overcome detuning from icing conditions. Delivery times for theses antennas are always longer.

LPFM stations utilize simple antennas that are more of the off the shelf type.

LPFM utilizes much lower powered FM exciter/transmitters than FM translators do. Some of these transmitters are consumer and home made types. If a broadcast type exciter is purchased by an LPFM operator the power needed is substantially less and that equipment is available for faster delivery.

An FM translator that is authorized for 250-watts ERP requires at least a 300-watt transmitter (for line loss) and a two-bay antenna. This equipment always takes longer for delivery than a 30-watt FM exciter.

The main issue to consider in extending the length of LPFM construction permits is the issue of warehousing frequencies. Future LPFM applicants (as well as future FM translator applicants) should have available the most amount of frequencies in future filing windows.

LPFM should not cut its own throat by allowing LPFM permittees to sit on permits for a far-extended period.

An extension of LPFM permits is needed, however the length should go to 24-months and not 36-months. This compromise will afford more LPFM stations more time to be built and not be so long as to preclude future LPFM applications in the next window.

In conjunction with the proposed 24-month LPFM construction period the Commission should automatically extend all the unbuilt LPFM by six-months. This will reduce the burden on the Commission's resources and be a fair balance between allowing more time to build LPFM stations and avoiding the warehousing of frequencies.

Paragraph 30 and 31.

The technical rules for LPFM and FM translators are different and every FM translator license does not necessarily take the place of a LPFM. On many frequencies a FM translator may be authorized where on the same frequency a LPFM could not be accepted for filing.

A LPFM filing window was opened in 2000-2001 that was prior to the March 2003 FM translator-filing window.

Eastern Sierra filed FM translator applications in Nevada and California only. Some applicants did file on a national basis however those permits will most likely re-broadcast a regional FM station and not a national service that has been speculated.

To provide a priority to LPFM over FM translator service would create havoc in the industry. Furthermore at a time when satellite radio threatens the continued existence of terrestrial radio the utilization of FM translators by full-service FM stations is even more critical today.

Therefore FM translators and LPFM must remain equal in status. Although this proposed rulemaking states that 8,000 FM translator applications remain on file with the Commission, far fewer could ever be granted.

Utilizing a formula of an average of 4 applications per MX group and if one grant occurs from each group then the total amount of additional FM translator permits that could be granted is only 2,000 (from the March 2003 filing window).

Displacement by full service FM stations has already occurred. In the two-plus years since the March 2003 window, FM stations have displaced previously filed short form FM translator applications. Because of the strict rules of what constitutes a minor change a fair amount of these short-form applications will never go any further.

In addition applicants made mistakes in their short-form filings. An unnoticed site or frequency change in an FM station or existing FM translator also stops their short-form application from going any further.

This is regardless of whether or not a settlement may be reached with competing applicants. This is because a settlement in this case or the situation with a displaced application would not produce a long-form application that is acceptable for filing.

Therefore realistically the remaining FM translator applications on file will produce 1,500 grants on the low side and 2,500 FM translator grants on the high side. Even the higher estimate is still less than the 3,300 grants so far from the March 2003 window.

The Commission should carefully consider this number and realize that the number of potential FM translator grants has been overstated and the preclusive effect is far less than thought.

As stated there was a 2000-2001 LPFM filing window and very few opportunities remained for LPFM station in major markets. Because this LPFM window occurred before the FM translator window, then with or without FM translators the major market opportunities for LPFM are already limited.

Regardless of whether some of the FM translator applicants have a connection to the community does not make an application non-viable. A local/regional FM station may still be translated even if the owner is non-local.

Furthermore many of the applicants do have a connection to the local and regional communities they filed for. It does not make sense to penalize all applicants because a few companies have filed larger quantities of applications. There was no prohibition on the amount of applications one company could file and it does not appear that any of the Commission's rules were broken.

Paragraph 32 and 33.

FM translator-based delivery service is an important service and should remain equal with LPFM. There are many FM translators that are daisy chained with each other. If one FM translator were displaced, service to a group of FM translators would be in jeopardy.

In no case should an LPFM have priority over an FM translator. Any applicant may make a pledge. It would set a dangerous precedent and take away valuable service to the public.

In comparing the coverage of LPFM and FM translators, the FM translators are a far more efficient use of spectrum. FM translators cover 16 kilometers and LPFM only covers 5 to eight kilometers. FM translators and LPFM are secondary to new full-service stations for a valuable reason. A higher power facility is always a more efficient of spectrum.

In order to have a well managed service all FM translators must be licensed on an equal basis. The same filing fee is paid and the licensee should be entitled to the same protection for the same price.

The Commission should not dismiss any of the pending FM translator long-form applications, the potential remaining singletons or the mutually exclusive applications. Applicants rely on the Commission's window filing process to file a timely protected application.

Applicants spend a lot of time and financial resources to timely file an application that is protected from future applications. Money is spent on legal counsel and consulting engineers. There is a lot of time waiting for applications to be granted and a greater length of time has occurred waiting for the pending MX settlement window for FM translators.

The FCC window filing process is sacred to many and must be relied upon for the March 2003 FM translator filing window as well as all other past and future filing windows for all types of services.

There is one major rule change that the Commission could implement that would help both FM translators and LPFM. The proposal is to allow the conversion of a FM translator license to a LPFM license and a LPFM license converted to a FM translator license.

In conjunction with this rule change the Commission would need to allow the sale or trade of a LPFM license. This would be beneficial to the public in instances where one service would provide less interference than the other and greater coverage could be achieved.

Respectfully submitted,

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